

THE HONORABLE JUDGE JOHN C. COUGHENOUR

UNITED STATES DISTRICT COURT  
WESTERN DISTRICT OF WASHINGTON  
AT SEATTLE

CHONG and MARILYN YIM, KELLY LYLES,  
EILEEN, LLC, and RENTAL HOUSING  
ASSOCIATION OF WASHINGTON,

Plaintiffs,

vs.

THE CITY OF SEATTLE, a Washington  
Municipal Corporation,

Defendant.

No. 2:18-cv-00736-JCC

BRIEF OF AMICI CURIAE PIONEER  
HUMAN SERVICES AND THE TENANTS  
UNION OF WASHINGTON IN  
OPPOSITION TO PLAINTIFFS' MOTION  
FOR SUMMARY JUDGMENT AND IN  
SUPPORT OF DEFENDANT'S MOTION  
FOR SUMMARY JUDGMENT

NOTE ON MOTION CALENDAR:  
January 11, 2019

**Oral Argument Requested**

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## Other Authorities

### American Bar Association

*ABA launches online database of collateral consequences for each U.S. jurisdiction* (December 16, 2014), available at [https://www.americanbar.org/news/abanews/aba-news-archives/2014/12/aba\\_launches\\_online/](https://www.americanbar.org/news/abanews/aba-news-archives/2014/12/aba_launches_online/) (last visited November 15, 2018) .....13, 14

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## I. INTRODUCTION

My story is one of being a mother of two beautiful boys and the wife of a husband who is impacted by this. As a result of his criminal convictions, in the 20 years I've spent here in Seattle, we've spent time looking for housing, that often because of his criminal convictions, they would tell us right up front, don't even bother with your 35 bucks, we're not gonna approve you. So instead we sought out housing in areas where our kids lived in areas with less green space, not sidewalks where we could go out and play, busy streets, mold in the homes, all of the things that our people experience. --Abigail Echo-Hawk, Seattle Indian Health Board.<sup>1</sup>

The Seattle Fair Chance Housing Ordinance (Ordinance) is a deliberate and powerful step toward dismantling racist structures and systems that have created barriers to fair access to housing in the City of Seattle for generations. The Ordinance addresses a supposedly neutral, yet unnecessary, business practice that has a disproportionate and devastating effect on people of color, their families, and their communities: landlords' use of criminal records when screening potential tenants.

In the long process of enacting the Ordinance, people on whose behalf it was passed – some of whose voices are incorporated in this brief – patiently and repeatedly explained in private conversations and public forums why fair chance housing laws are essential: to keep families and communities together, to address deep-rooted racial bias, and to have an enforcement tool to challenge private citizens who all too often re-convict people with criminal records. The law should not empower private citizens, in this case, landlords, to perpetuate discrimination that denies people access to housing and negatively impacts their families and

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<sup>1</sup> Ms. Echo-Hawk testified in support of the Fair Chance Housing Ordinance at the July 13, 2017 Civil Rights, Utilities, Economic Development and the Arts Committee (CRUEDA) meeting. Her testimony is available at <https://www.seattlechannel.org/mayor-and-council/city-council/city-council-all-videos-index?videoid=x78912> at 2:01:18- 2:03:04.

1 communities. Landlords should not have unchecked authority, influenced by bias and  
 2 discrimination, to further punish a person who has either been subject to the criminal justice  
 3 system and satisfied the terms of their judgment and sentence, or brought into the system simply  
 4 due to an arrest. The Ordinance is an appropriate and reasonable means of checking landlords'  
 5 explicit and implicit bias, which fuels discretionary and discriminatory decisions about who is a  
 6 desirable tenant and who is not.

7 Pioneer Human Services (Pioneer) and the Tenants Union of Washington (TU) are  
 8 nonprofit organizations that assist and advocate for people who will directly benefit from the  
 9 Ordinance's protections. Both Pioneer and TU were deeply involved in efforts to pass the  
 10 Ordinance. They file this amicus brief to supplement the City's arguments with respect to the  
 11 important government interests and public purposes the Ordinance advances.

## 12 **II. IDENTITY AND INTEREST OF AMICI CURIAE**

### 13 **A. Pioneer Human Services**

14 Pioneer, a Seattle-based nonprofit organization, is the oldest and largest reentry services  
 15 provider in Washington. It was founded in 1963 to support people returning to the community  
 16 post-incarceration. In addition to helping people with criminal records secure housing and  
 17 employment, Pioneer develops affordable housing and is the sole provider in Washington of  
 18 residential reentry services for people released from federal prison. A significant and  
 19 disproportionate number of the people whom Pioneer serves are people of color.

20 Besides providing direct services, Pioneer advocates for legal and policy changes  
 21 promoting the rights of people reentering the community and fights policies and practices that  
 22 continue to punish people after they complete their sentences. Pioneer believes that no one

1 should be forced into homelessness or put their family's housing stability at risk simply because  
 2 they have a criminal record. To that end, one of Pioneer's advocacy priorities is supporting  
 3 efforts to increase housing availability for people with criminal records. Pioneer also recognizes  
 4 the need for anti-discrimination laws that address the consequences of racial bias and inequities  
 5 in the criminal justice system, including housing discrimination.

6 Pioneer actively participates in the Fair and Accessible Renting for Everyone coalition  
 7 (FARE), a group of community members and organizations whose efforts resulted in passage of  
 8 the Ordinance. Central to FARE's advocacy are beliefs that housing is an essential right for  
 9 everyone, regardless of an individual's criminal record; that criminal records disproportionately  
 10 impact communities of color and remain an unnecessary barrier to rental housing; and that fair  
 11 and effective housing laws like the Ordinance will help move Seattle beyond its history of  
 12 segregation and discrimination.

### 13 **B. Tenants Union of Washington**

14 TU is a Washington nonprofit organization that has engaged in tenant education,  
 15 outreach, organizing, and advocacy since 1977. TU works to create improvements in tenants'  
 16 living conditions and to challenge and transform unjust housing policies and practices. TU  
 17 believes that tenants themselves must be the leaders of efforts to transform housing conditions  
 18 and its work focuses on helping tenants build collective power in their buildings and  
 19 communities. Most tenants TU serves are very low income, people of color, women, and/or  
 20 immigrants or refugees.

21 In addition to its education and outreach work, TU and its members have taken a  
 22 leadership role in legislative advocacy supporting tenants' rights, actively challenging



1 displacement, economic eviction, and gentrification. Addressing the displacement of people and  
 2 communities of color is an essential part of that advocacy, as is supporting anti-discrimination  
 3 laws limiting landlords' use of criminal records in rental decisions. TU's work on this issue is  
 4 grounded in the recognition that Seattle residents with arrest or conviction records are  
 5 disproportionately people of color and that laws recognizing racial bias in the criminal justice  
 6 system can prevent the housing discrimination that bias creates. Like Pioneer, TU actively  
 7 participates in FARE and was a key player in the Ordinance's passage.

### 8 **III. BACKGROUND**

9 Pioneer and TU incorporate by reference the factual background set forth in the City's  
 10 Combined Opposition to Plaintiffs' Motion for Summary Judgment and Cross Motion for  
 11 Summary Judgment. *See* Dkt. No. 33 at 2-7.<sup>2</sup>

### 12 **IV. ARGUMENT**

#### 13 **A. The Ordinance will positively impact families and communities, especially families 14 and communities of color, by removing barriers to housing faced by people with 15 criminal records.**

16 I'm 20 years old and I'm a convicted felon. I'm currently a student. I would  
 17 appreciate if you pass this because it will help me move back with my family and  
 18 being able to, you know, be part of the community again. All I'm trying to do is,  
 19 you know, get back to my family, but I can't do that because I'm a felon, and  
 20 therefore I can't live in their residence. And that is a barrier for me because I am  
 21 trying to better myself and be part of the community, and I can't do that because  
 22 of this background check thing.... --Alex Lopez, community member.<sup>3</sup>

<sup>2</sup> Where applicable, Pioneer and TU cite to the Stipulated Record ("SR") which the City filed as an appendix to its Summary Judgment Brief and which is docketed as Dkt. Nos. 33-1 through 33-14.

<sup>3</sup> Mr. Lopez testified in support of the Fair Chance Housing Ordinance at the July 13, 2017 CRUEDA meeting. His testimony is available at <https://www.seattlechannel.org/mayor-and-council/city-council/city-council-all-videos-index?videoid=x78912> at 1:59:08 – 2:00:04.

1 I'm really sick and tired of being compared to this monster, boogey man, scary  
 2 type criminal when looking for housing. I don't know much about the HUD  
 3 guidelines but I can tell you personally that in 2016 I was looking for a place to  
 4 live for my family and I. At that point my conviction was over ten years old and  
 5 all I kept hearing was no. So for those of us who have spent our time, who have  
 6 overcome whatever obstacles were in front of us and are in a position to find  
 7 housing we're just sick and tired of hearing no. We want to get on with our lives.  
 8 We want to rent a nice comfortable place to live like anybody else and that's all I  
 9 kept hearing was no, no, no. I made more than enough money to pay the rent. I  
 10 had good credit. I had a good rental history. But I kept hearing no. This [law] will  
 11 help level the playing field for some of us. –Augustine Cita, Urban League of  
 12 Seattle.<sup>4</sup>

13 The Ordinance is an important tool to challenge policies and practices that prevent people  
 14 with criminal records from finding housing. Its positive effects, however, extend beyond  
 15 individuals with criminal records to positively impact families and communities by keeping  
 16 families together and protecting children and other vulnerable community members.

17 The significance of the Ordinance as a tool to strengthen families and communities is  
 18 made clear when the harsh effects on families that criminal records create are considered. Nearly  
 19 half of all children in the United States have at least one parent with a criminal record. *See*  
 20 Rebecca Vallas, et al., Center for American Progress, *Removing Barriers to Opportunity for*  
 21 *Parents with Criminal Records and Their Children* 1 (Dec. 2015), available at SR\_0438-476.  
 22 The effects of having a parent with a criminal record fall most heavily on children of color. In  
 2007, of the 1.7 million children with an incarcerated parent, more than seventy percent were  
 children of color. *See* Stephanie Hong, *Note: Say Her Name: The Black Woman and*

<sup>4</sup> Mr. Cita spoke in support of the Fair Chance Housing Ordinance at the July 13, 2017 CRUEDA meeting. His  
 testimony is available at [https://www.seattlechannel.org/mayor-and-council/city-council/city-council-all-videos-  
 index?videoid=x78912](https://www.seattlechannel.org/mayor-and-council/city-council/city-council-all-videos-index?videoid=x78912) at 38:15 – 40:23.

1 *Incarceration*, 19 Geo. J. Gender & L. 619, 630 (Spring 2018). Black children are almost nine  
 2 times more likely to have an incarcerated parent than white children. *Id.*<sup>5</sup>

3 In the absence of protective legislation and policies, the sheer number of children with a  
 4 parent with a criminal record necessarily means that the damaging impacts of a criminal record  
 5 touch multiple generations. *See* Vallas at 1. Among these impacts are housing instability that can  
 6 make family reunification post-incarceration “difficult if not impossible.” *Id.* at 2. Parents who  
 7 cannot find stable housing post-incarceration may not be able to regain custody of their children.  
 8 *See* Valerie Schneider, *The Prison to Homelessness Pipeline: Criminal Record Checks, Race,*  
 9 *and Disparate Impact*, 93 Ind. L. J. 422, 433 (Spring 2018). A single parent whose partner has a  
 10 criminal record may have to choose between raising their children alone or losing his or her  
 11 children to the foster care system. *See* Hong at 630-32. Even when families remain together, the  
 12 existence of a criminal record makes it difficult to find stable, long-term housing, and frequent  
 13 moves can have negative effects on children’s educational outcomes as well as on their physical,  
 14 cognitive, social, and emotional development. Vallas at 10-11. In sum, “the barriers to housing  
 15 faced by parents with criminal records not only stand in the way of housing stability in the short  
 16 term but also can carry substantial, negative, and long-term consequences for children.” *Id.* at 11.

17 Moreover, barriers to housing based on an individual’s criminal record can also arise  
 18 from children with criminal records, a disproportionate number of whom are children of color,<sup>6</sup>  
 19

20 <sup>5</sup> There is no reason to believe that racial disproportionality in the number of children with a parent who is  
 21 incarcerated does not extend to children with a parent with an arrest record, a parent who was charged but not  
 convicted, or a parent who was convicted of an offense but who was not sentenced to prison.

22 <sup>6</sup> Youth of color make up a disproportionate number of youth in juvenile detention in King County. Black youth  
 account for 6.8 percent of the overall county population, but 47.3 percent of those in juvenile detention; Native  
 American youth are 0.8 percent of the overall county population, but 3.4 percent of those in juvenile detention; and

1 which similarly affects families' ability to stay united in adequate housing. Racial Equity Toolkit  
 2 at 3-4, SR\_0266-0267. And, family members who are elderly, have disabilities, or are otherwise  
 3 vulnerable are affected when a caretaker has a criminal record and cannot find housing. *See*  
 4 Hong at 630; *see also* Lenora Lapidus, et al., *Caught in the Net: The Impact of Drug Policies on*  
 5 *Women and Families* (2004) at 53, *available at*  
 6 [http://www.brennancenter.org/programs/cj/caught\\_in\\_the\\_net\\_report.pdf](http://www.brennancenter.org/programs/cj/caught_in_the_net_report.pdf) (noting that 26 percent  
 7 of women living in the United States "provide support and care to chronically ill, disabled, or  
 8 aged family members and friends").

9 The barriers to housing faced by people with criminal records and their families hit  
 10 harder in a city like Seattle, where a history of racially restrictive covenants, entrenched redlining  
 11 practices, zoning regulations, and, more recently, gentrification, has resulted in a segregated city.  
 12 *See* Racial Equity Toolkit at 6, SR\_0269; *see also* Seattle Civil Rights and Labor History Project,  
 13 University of Washington, "Segregated Seattle," *available at*  
 14 <http://depts.washington.edu/civilr/segregated.htm> (last visited November 19, 2018).<sup>7</sup> Structural  
 15 and institutional racism has also led to racial inequities in homeownership, with a  
 16 disproportionate number of Seattle renters being people of color. *See* Racial Equity Toolkit at 6,  
 17 SR\_0269. As a result, "practices impacting tenants have a disproportionate impact on these  
 18 communities [of color]." *Id.* These practices include discrimination against people with criminal  
 19

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20 Latino youth are 9.5 percent of the overall population and 20.6 percent of those in juvenile detention. *See* Racial  
 Equity Toolkit at 3-4, SR\_0266-267.

21 <sup>7</sup> For an extended discussion of the history of discrimination in housing, both nationally and in Seattle, *see* Brief of  
 22 Amici Curiae Fred T. Korematsu Center for Law and Equality and ACLU of Washington in Opposition to Plaintiffs'  
 Motion for Summary Judgment and in Support of Defendant's Cross-Motion for Summary Judgment, Dkt. No. 38,  
 at 7:21 – 12:22.

1 records, which is not uncommon among Seattle landlords. *See* Racial Equity Toolkit at 3,  
 2 SR\_0266 (noting that one study found 43 percent of Seattle landlords are inclined to reject  
 3 applicants with criminal backgrounds). As George Lipsitz, a historian and Black Studies scholar  
 4 explains, “[h]ousing segregation...promotes the concentration of poverty in neighborhoods  
 5 inhabited largely by [B]lacks and Latinos, making members of these groups especially  
 6 vulnerable to the criminalization of poverty, the proliferation of punishments inside the criminal  
 7 justice system, and the expansion of the collateral consequences of arrests and criminal  
 8 convictions for ex-offenders, their families, and their communities[,]” consequences which  
 9 include barriers to housing for people with criminal records. George Lipsitz, “*In an Avalanche*  
 10 *Every Snowflake Pleads Not Guilty*”: *The Collateral Consequences of Mass Incarceration and*  
 11 *Impediments to Women’s Fair Housing Rights*, 59 UCLA L. Rev. 1746, 1749-50 (2012).

12 Being able to find housing only in a segregated and economically disadvantaged area of  
 13 the City results in inequities in all aspects of social and civic life. *See* Patrick Sharkey, *Stuck in*  
 14 *Place: Urban Neighborhoods and the End of Progress Toward Racial Equality* 14-17 (2013).

15 Because most aspects of social and civic life – schools, government services, electoral districts –  
 16 are organized by geography, there is a direct relationship between where people live and the  
 17 resources and opportunities available to them. *Id.* Racial segregation often corresponds with  
 18 neighborhood inequities, even after accounting for differences in economic status. *Id.* at 14-15.  
 19 These inequities can include differences in housing standards; access to basic services and public  
 20 amenities like parks, recreation centers, and playgrounds; and exposure to environmental hazards  
 21 and pollution. *Id.* And, these effects are intergenerational, continuing to limit opportunities  
 22 available to future generations. *Id.* at 9-10, 91-116.

1 In addition to considering the research and particular history of housing discrimination in  
 2 Seattle, the City heard directly from many real people denied housing because of criminal  
 3 records.<sup>8</sup> Staff from the City’s Office of Civil Rights (OCR) met with people who are and had  
 4 been incarcerated, and their families, and heard from “mothers and fathers [who] spoke about the  
 5 inability to find housing to provide for their children because of their own record or the child’s  
 6 record.” Racial Equity Toolkit at 5, SR\_0268. Their conclusion is set forth in the Ordinance’s  
 7 recitals: “individuals and parents who have served their time must be able to secure housing if  
 8 they are to re-enter into society to successfully rebuild their lives and care for their families[.]”  
 9 Ordinance, SR\_0588. In contrast, despite multiple opportunities to testify, landlords did not  
 10 present a single, documented incident where failure to do a criminal record check of a potential  
 11 tenant resulted in injury, or testify that criminal background checks actually made anyone safer.<sup>9</sup>

12 The Ordinance will not eliminate racism and segregation in Seattle entirely. But, by  
 13 eliminating some of the barriers to finding adequate housing, it will strengthen families and, by  
 14 extension, communities. Rather than being limited to substandard housing in already segregated  
 15 and economically disadvantaged areas of Seattle, or otherwise pushed out of the city, people with  
 16 criminal records and their families will have access to more resources, better services, and, most  
 17 important, stay together.

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20 <sup>8</sup> A summary of the City’s deliberate and thoughtful process before passing the ordinance, including meetings and  
 21 discussions with affected community members and other stakeholders, as well as a chronology of public meetings  
 22 and hearings where CRUEDA and the City Council heard public testimony, is set forth in the Declaration of Asha  
 Venkataraman, a City policy analyst, submitted in support of the City’s summary judgment brief. *See* Dkt. No. 34  
 (Venkataraman Declaration).

<sup>9</sup> *See* Venkataraman Declaration, Dkt. No. 34, at 6, ¶ 22.

**B. The Ordinance will raise awareness of, and decrease, implicit bias against people of color without criminal records as well as those with criminal records.**

“By continuing to legalize background checks as a current housing practice, the city is empowering private citizens to perpetuate systems of racism. The city of Seattle can take action that bolsters the city’s race equity work by removing this part of the system that legalizes a racist practice.” –Pamela Stearns, community member and member of FARE.<sup>10</sup>

“The Fair Chance Housing legislation currently being considered by Seattle’s City Council is the exact kind of change we still need to protect the safety of all Seattle renters. The current laws allow the rampant racial inequity and anti-Blackness within our criminal (in)justice system to be further reinforced in our rental housing.” –The Tenants Union.<sup>11</sup>

It is well documented that many people hold implicit biases whereby being Black is closely, and wrongfully, associated with being a “criminal.” *See, e.g.,* Michelle Alexander, *The New Jim Crow: Mass Incarceration in the Age of Colorblindness* (2010) (noting that “[t]oday mass incarceration defines the meaning of blackness in America: Black people, especially black men, are criminals. That is what it means to be Black.”). As OCR explained in its racial equity analysis of fair housing issues, “[t]he narrative of public safety surrounding the need for criminal background checks does not exist outside this societal context.” Racial Equity Toolkit at 6, SR\_0269. Because of the inequities in the criminal justice system, not only does landlords’ practice of screening for criminal records result in a disparate impact on people of color, but “people of color who do not have records are [also] harmed by existing racial bias in tenant selection that may associate race with criminality.” *See* Racial Equity Toolkit at 4, SR\_0267. In

<sup>10</sup> Ms. Stearns testified in support of fair chance housing at the May 23, 2017 CRUEDA meeting. Her testimony is available at <https://www.seattlechannel.org/mayor-and-council/city-council/city-council-all-videos-index?videoId=x76441> at 25:42 - 28:00.

<sup>11</sup> The Tenants Union, *Opinion: The Path to Housing Justice is Intersectional Tenant-Led Movements*, South Seattle Emerald, July 24, 2017, available at <https://southseattleemerald.com/2017/07/24/the-path-to-housing-justice-is-intersectional-tenant-led-movements/> (last visited November 19, 2018).



1 2014, for example, fair housing tests conducted by OCR found that “[i]n some cases, African  
 2 Americans were told they would have to undergo a criminal record check when similarly situated  
 3 white counterparts were not.” *Id.*

4 The United States Supreme Court recently acknowledged that unconscious bias can cause  
 5 racial discrimination and segregation in housing. *See Tex. Dep’t of Hous. & Cmty. Project, Inc.*,  
 6 135 S. Ct. 2507, 2522 (2015) (holding that disparate impact claims are cognizable under the Fair  
 7 Housing Act and explaining that “[r]ecognition of disparate-impact liability under the FHA also  
 8 plays a role in uncovering discriminatory intent: It permits plaintiffs to counteract unconscious  
 9 prejudices and disguised animus that may escape easy classification as disparate treatment. In  
 10 this way disparate-impact liability may prevent segregated housing patterns that might otherwise  
 11 result from covert and illicit stereotyping”). Similarly, Washington state courts have emphasized  
 12 the need for the law to address implicit bias head-on. *See, e.g., State v. Jefferson*, 2018 Wash.  
 13 LEXIS 719, \*2, \*20 (Wash. Nov. 1, 2018) (holding that *Batson v. Kentucky*, which prohibited  
 14 the use of peremptory challenges to exclude jurors based solely on their race, does not provide  
 15 protections “robust enough to effectively combat race discrimination during jury selection”  
 16 because *Batson* “fails to address preemptory strikes due to implicit or unconscious bias, as  
 17 opposed to purposeful race discrimination”); *State v. Saintcalle*, 178 Wn.2d 34, 49, 309 P.3d 326  
 18 (2013), *cert. denied*, 134 S. Ct. 831, 187 L. Ed. 2d 691 (2013) (discussing implicit bias and  
 19 explaining that “people are rarely aware of the actual reasons for their discrimination and will  
 20 genuinely believe the race-neutral reason they create to mask it”).

21 This Court has also recognized the problems presented by unconscious bias, by including  
 22 criminal jury instructions addressing unconscious bias as well as a video presented to jurors in



every case. *See* United States District Court, Western District of Washington, *Criminal Jury Instructions-Unconscious Bias*, available at <https://www.wawd.uscourts.gov/sites/wawd/files/CriminalJuryInstructions-ImplicitBias.pdf> (last visited November 17, 2018) (“Unconscious Bias Jury Instructions”); United States District Court, Western District of Washington, *Understanding the Effects of Unconscious Bias Juror Video*, available at <https://www.wawd.uscourts.gov/jury/unconscious-bias> (last visited November 17, 2018). As the explanatory statement that accompanies the unconscious bias jury instructions explains, “the body of research supports that, as a general matter, awareness and mindfulness about one’s own unconscious associations are important and thus a decision-maker’s ability to avoid these associations, however that is achieved, will likely result in fairer decisions.” *Id.*

No law can completely eliminate implicit bias that results in the association of “criminality” with Black people and other people of color, but, as with other laws and policies that attack implicit bias head-on, the Ordinance can play a role in raising awareness of that bias.

**C. The Ordinance prohibits landlords from punishing people with criminal records after they have served their sentence.**

I was formerly incarcerated. I was sentenced to 15 months in federal prison, three years probation, and a \$30,000 fine, and that was in 2002. I wasn’t sentenced to a lifetime of homelessness, I wasn’t sentenced to a lifetime of unemployment, I wasn’t sentenced to anything but those three conditions. And I’ve met them all.... Unless my sentence says I’m going to struggle with employment the rest of my life and that I won’t be able to find anywhere to rent, then to me, my debt is paid. My debt was between the United States of America and me, and not between a private citizen and myself years later. --Susan Mason, community member.<sup>12</sup>

<sup>12</sup> Ms. Mason testified in support of fair chance housing at the May 23, 2017 CRUEDA meeting. Her testimony is available at <https://www.seattlechannel.org/mayor-and-council/city-council/city-council-all-videos-index?videoid=x76441> at 16:48 – 18:58.

1 In housing, more than any other arena, I think, we see that a criminal history  
 2 equates to a life sentence. --Hilary Young, Pioneer Human Services.<sup>13</sup>

3 Inability to obtain housing is not part of the state-mandated punishment scheme. There is  
 4 already a complex system in place to decide how long people spend in prison, when and how  
 5 they leave, and what restrictions are placed on them once they are back in the community. By  
 6 allowing landlords to randomly judge potential tenants based in part on the individual's criminal  
 7 record, and to do so after he or she has served their sentence, landlords are usurping the authority  
 8 vested in the government and ignoring laws and procedures that are designed to address the same  
 9 concerns landlords raise.

10 Much attention has been paid to the detrimental effects of a criminal justice system that  
 11 has resulted in mass incarceration, and in particular, mass incarceration of people of color. *See*,  
 12 *e.g.*, Michelle Alexander, *The New Jim Crow: Mass Incarceration in the Age of Colorblindness*  
 13 (2010). There is also an ongoing concern about collateral consequences, the sanctions that attach  
 14 to convictions and which can cause harm to individuals, their families, and their communities,  
 15 arguably far more, and for a longer time, than serving time in a jail or prison. For example, the  
 16 American Bar Association currently makes available an online database of federal and state laws  
 17 that restrict employment, housing, and other benefits and opportunities for people with  
 18 convictions, having seen the need to provide attorneys, lawmakers, and the public with "accurate  
 19 information about the scope of collateral consequences." *See* American Bar Association, *ABA*  
 20 *launches online database of collateral consequences for each U.S. jurisdiction* (December 16,

21 \_\_\_\_\_  
 22 <sup>13</sup> Ms. Young testified in support of fair chance housing at the May 23, 2017 CRUEDA meeting. Her testimony is  
 available at [https://www.seattlechannel.org/mayor-and-council/city-council/city-council-all-videos-](https://www.seattlechannel.org/mayor-and-council/city-council/city-council-all-videos-index?videoid=x76441)  
[index?videoid=x76441](https://www.seattlechannel.org/mayor-and-council/city-council/city-council-all-videos-index?videoid=x76441) at 2:12:08 – 2:13:36.

2014), available at [https://www.americanbar.org/news/abanews/aba-news-archives/2014/12/aba\\_launches\\_online/](https://www.americanbar.org/news/abanews/aba-news-archives/2014/12/aba_launches_online/) (last visited November 15, 2018).

Less attention has been paid to the “informal” collateral consequences of a criminal conviction.<sup>14</sup> Unlike formal collateral consequences, such as narrowed eligibility to public housing, loss of voting rights, and disqualification from certain occupations, which arise from statutes and regulations,<sup>15</sup> informal collateral consequences are not rooted in specific legal authority. People with convictions, and even those who were merely arrested, or charged and found not guilty, experience well-documented informal collateral consequences when they fill out a rental application and are judged by a landlord on an arbitrary basis. And, as discussed in Section IV., A. above, it is not just the individual with the criminal record who experiences negative economic and social effects, but family members and others in the individual’s support network and community.

In contrast to landlords’ random and subjective decision-making processes, which can and do sentence people with criminal records to years of substandard housing and often, homelessness, government sentencing guidelines are a deliberate effort to determine appropriate punishment. Washington’s complex Sentencing Reform Act, RCW ch.9.94A (SRA),<sup>16</sup> which guides courts’ determination of punishment for adults convicted of offenses under Washington

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<sup>14</sup> Professor Wayne Logan, an expert on the collateral consequences of criminal convictions, has used “informal collateral consequence” to describe discretionary penalties and punishment that are not formally imposed by the state but which fall within “the gamut of negative social, economic, medical, and psychological consequences of conviction[.]” Logan, *Informal Collateral Consequences*, 88 Wash. L. Rev. 1103, 1104 (2013).

<sup>15</sup> Pioneer and TU do not agree that all such legal conditions and consequences of convictions are appropriate or necessary, but a discussion of that issue is beyond the scope of this amicus brief.

<sup>16</sup> Pioneer and TU do not intend by this discussion to endorse any part of the SRA, or suggest they agree to how people are currently sentenced in Washington. Discussion of the SRA is for the purpose of showing how the criminal justice system has a structure in place to determine sentencing and conditions of release.

1 state law, is an example of the complexity and detail of government sentencing guidelines. The  
 2 purpose of the SRA is to provide a “structure[d]” system to determine how criminal defendants  
 3 should be sentenced. RCW 9.94A.010. The SRA is also intended to “[e]nsure that the  
 4 punishment for a criminal offense is proportionate to the seriousness of the offense and the  
 5 offender’s criminal history;” “[p]romote respect for the law by providing punishment which is  
 6 just;” “[b]e commensurate with the punishment imposed on others committing similar offenses;”  
 7 “[p]rotect the public;” “[o]ffer the offender an opportunity to improve himself or herself;”  
 8 “[m]ake frugal use of the state’s and local governments’ resources;” and “[r]educ[e] the risk of  
 9 reoffending by offenders in the community.” *Id.* Recent Washington state court decisions  
 10 illustrate the complexity of the SRA, including the number of factors that are considered when a  
 11 person is sentenced, and how and when prior offenses are taken into consideration, not just with  
 12 the length of the sentence but with the determination of whether and when an individual can be  
 13 transferred to community custody. *See, e.g., In re Pers. Restraint of Gronquist*, 2018 Wash.  
 14 LEXIS 822, at \*1 (Wash. Nov. 8, 2018); *State v. Weatherwax*, 188 Wn.2d 139, 143, 392 P.3d  
 15 1054 (2017). As the Washington Supreme Court explained in *In re Pers. Restraint of*  
 16 *LaChappelle*, “[b]ecause each offense must be analyzed under the law in effect at the time the  
 17 offense was committed, each time the SRA is amended it adds an additional level of complexity  
 18 to the task of the courts, as well as the prosecution, the defense, and the Department of  
 19 Corrections.” *LaChappelle*, 153 Wn.2d 1, 6-7, 100 P.3d 805 (2004).<sup>17</sup>

22 <sup>17</sup> In 2004, when *LaChappelle* was decided, the SRA had been amended 181 times since it was enacted in 1981, and the court noted that the SRA’s “complexity” was “exacerbated by each successive change[.]” 135 Wn.2d at 7.

As one criminal justice scholar has written, “[t]he U.S. criminal justice system ‘piles on.’ It punishes too many for too long.” Eisha Jain, *Capitalizing on Criminal Justice*, 67 Duke L. J. 1381, 1382 (April 2018). The focus on overcriminalizing, excessive sentencing, and mass incarceration, and the racial inequities embedded in these systems, has been criticized by organizations across the political spectrum. *Id.* But private actors, like landlords, also “pile on.” *Id.* at 1384. The state creates the criminal records that become tools for private actors to deploy, to the detriment of people with criminal records, their families, and their communities. *Id.* As a result, landlords are able to penalize people with criminal records in ways that the law does not require. Landlords do so even though, as the City recognized when enacting the Ordinance, “there is no sociological research establishing a relationship between a criminal record and an unsuccessful tenancy[.]” *See* Ordinance, SR\_0589. And, because people with criminal records are disproportionately people of color, landlords using criminal records as a proxy for determining who is and is not a “good tenant” are able to discriminate with impunity, whether intentionally or as a result of implicit bias.

To meaningfully address “piling on,” restricting the use and abuse of criminal records is essential. *See* Jain at 1387 (“Responding to overcriminalization thus may require key institutions to change their practices, including by removing access to criminal record information....”). It is thus appropriate and reasonable that the City take measures to restrain the unfettered discretion of private actors – landlords, in this case – to use arbitrary, “gut feelings,” infected with implicit bias, to decide which people with criminal records have “redeemed” themselves and are worthy of being forgiven for their contact with the criminal justice system. The Ordinance is a reasonable step towards limiting landlords’ ability to act as private juries and judges.

V. CONCLUSION

As organizations who help amplify the voices of people with criminal records, Pioneer and TU respectfully request the Court deny Plaintiffs' Motion for Summary Judgment and grant Defendant's Cross-Motion for Summary Judgment.

Respectfully submitted this 20th day of November, 2018.

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**Certificate of Service**

I hereby certify that on November 20, 2018, the foregoing document was electronically filed with the United States District Court's CM/ECF system, which will send notification of such filing to all attorneys of record:

DATED November 20th, 2018 at Seattle, Washington.

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